

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

BOSTON MEDICAL CENTER CORPORATION

Employer-Petitioner¹

and

1199 SEIU UNITED HEALTHCARE WORKERS
EAST – MASSACHUSETTS DIVISION, a/w
SERVICE EMPLOYEES INTERNATIONAL
UNION, CLC

Union

and

MASSACHUSETTS NURSES ASSOCIATION

Union

Case 1-UC-839

¹ The name of the Employer-Petitioner appears as amended at the hearing.

In the Matter of

BOSTON MEDICAL CENTER CORPORATION

Employer

and

1199 SEIU UNITED HEALTHCARE WORKERS
EAST – MASSACHUSETTS DIVISION, a/w
SERVICE EMPLOYEES INTERNATIONAL
UNION, CLC

Petitioner

and

MASSACHUSETTS NURSES ASSOCIATION

Union

Case 1-UC-841²

DECISION AND CLARIFICATION OF BARGAINING UNIT

Introduction

Boston Medical Center Corporation (BMC) is an acute care hospital located in Boston, Massachusetts, which was created on July 1, 1996, as a result of the merger of two hospitals, the former Boston City Hospital (BCH) and the former Boston University Medical Center Hospital (BUMCH). Prior to the merger, SEIU Local 285, which was the predecessor of 1199 SEIU United Healthcare Workers East (1199 SEIU), represented a bargaining unit of registered nurses (RNs) at BCH,³ and the Massachusetts Nurses Association (MNA) represented a bargaining unit of RNs at BUMCH. Pursuant to the consolidation agreement that effected the merger, BMC was required to recognize

² Boston Medical Center Corporation filed the petition in Case 1-UC-839 on January 27, 2006. On March 3, 2006, during the course of the hearings in that matter, 1199 SEIU United Healthcare Workers East – Massachusetts Division filed its petition in Case 1-UC-841. An order consolidating the two cases was issued on March 6, 2006.

³ Due to a series of mergers between SEIU locals since the creation of BMC, the RN unit at the former BCH, which was represented by SEIU Local 285 at the time of the merger, was later represented by SEIU Local 2020, followed by SEIU Local 9, followed by the current representative, 1199 SEIU. I shall refer to them collectively as SEIU.

existing unions at the former hospitals.⁴ Thus, after the merger, SEIU continued to represent a unit of RNs employed at locations at the former BCH campus, now referred to as BMC's "Harrison Avenue campus," and the MNA continued to represent RNs employed at locations at the former BUMCH campus, now referred to as BMC's "East Newton campus."⁵ There are currently 900 RNs in the SEIU unit and 600 RNs in the MNA unit.

BMC is in the process of building a new facility called the Moakley Building on the Harrison Avenue campus, which is currently scheduled to open about September 1, 2006. At the Moakley Building, BMC will provide some services that will be relocated from other locations on the Harrison Avenue campus and/or the East Newton campus, and some new services. BMC plans to employ about 42 to 48 RNs at the new facility when it opens. BMC has already offered transfers to the new facility to some BMC nurses and plans to offer transfers to other BMC nurses, the vast majority of whom are in the MNA unit.

In its petition, BMC asserts that the RNs who will be employed at the Moakley Building should be accreted into one of the two existing RN units.⁶ BMC, which is facing competing demands for recognition as the representative of the Moakley Building RNs from both SEIU and the MNA, takes no position as to which of the two units the Moakley Building nurses should be accreted to, and seeks the Board's determination of the matter. Each of the two unions asserts, on various grounds, that the disputed positions should be included in its existing unit, and the MNA asserts, in the alternative, that the petitions should be dismissed on various grounds.⁷

⁴ BMC Director of Human Resources James Canavan testified that, prior to the merger, BCH had nine bargaining units, including an RN unit, and BUMCH had three units, including an RN unit. Cecilia Wcislo, who was president of SEIU Local 285 at the time of the merger, testified that, prior to the merger, SEIU represented the BCH employees as part of a city-wide unit. BMC now has eight units: the two RN units at issue, a unit of interns and residents, an LPN unit, two skilled maintenance units, a unit of mental health clinicians/intervention counselors, and a service, clerical, technical, professional, and business office unit.

⁵ The part of BMC that is represented by SEIU is variously referred to as the former BCH campus, the Harrison Avenue campus, the Menino Pavilion, and the Menino campus. I shall refer to it as the Harrison Avenue campus. The part of BMC that is represented by the MNA is variously referred to as the former BUMCH campus, the former University Hospital campus, and the East Newton Street or East Newton campus. I shall refer it as the East Newton campus. See the map attached as Appendix A for a graphic representation of the BMC campus.

⁶ No party takes the position that a third, separate RN unit composed of RNs at the Moakley Building would be appropriate.

⁷ The parties' positions will be set forth in more detail below.

I find, for the reasons discussed below, that the MNA nurses who will be transferred to the Moakley Building, along with any new hires or SEIU nurses who are permanently assigned to the Moakley Building, belong in the MNA unit.

Background

BMC is a non-profit, academic acute care hospital that is affiliated with Boston University Medical School. It offers pediatric and adult care, primary care, and specialty care, and operates the largest trauma center in New England. BMC has 540 beds and provides services to 850,000 patients per year. It employs 5000 employees.

Pursuant to “enabling legislation” that abolished BCH⁸ and the consolidation agreement that created BMC in 1996, BMC offered employment to the former BCH and BUMCH employees and recognized the existing unions at the former institutions. During negotiations for a first collective-bargaining agreement with the two unions representing RNs, SEIU and the MNA negotiated jointly over certain issues common to all RNs, and representatives of both unions were at the table when the issue of the recognition clauses for each agreement was resolved.

Harrison Avenue/SEIU Campus

BMC’s Harrison Avenue campus is composed of a complex of buildings bounded on one side by Harrison Avenue and on another side by East Concord Street. The recognition clause in the SEIU contract, which has remained unchanged since the first agreement in 1996, covers nurses employed by BMC “at its 818 Harrison Avenue and 249 River Street, Boston, Massachusetts locations....”⁹ Cecilia Wcislo, who, as indicated above, was president of SEIU Local 285 at the time of the merger, testified that, at the time of the merger, the “818 Harrison Avenue” building cited in the SEIU recognition clause was an administrative building and mailing address at which no RNs were actually employed, and that the parties used that term to refer to the entire former BCH complex.¹⁰ At the time the first contract was negotiated, there were SEIU RNs working at various buildings on the Harrison Avenue campus, including the “new inpatient facility,” the Ambulatory Care Center (ACC), and the Dowling Building. SEIU nurses still work at the “new inpatient facility,” which was later renamed the Harrison Avenue

⁸ BCH was a public hospital owned by the City of Boston, so that the Boston City Council had to approve the merger, pursuant to enabling legislation passed by the state legislature. BUMCH was a private institution, as is BMC.

⁹ The 249 River Street address referred to in the SEIU recognition clause is the Boston Specialty and Rehabilitation Hospital, which is located four to five miles away in a section of Boston called Mattapan, and which was part of the former BCH campus.

¹⁰ Director of Human Resource Operations James Canavan testified that 818 Harrison Avenue was demolished in 1997.

Pavilion, and renamed again two or three years ago as the Menino Pavilion;¹¹ the ACC, which is now called the Yawkey ACC; and, possibly, the Dowling Building.¹² In addition, in 1996 there were SEIU nurses working at some other buildings on the Harrison Avenue campus, but it appears that this is not currently the case.¹³

East Newton/MNA Campus

BMC's East Newton campus is composed of a complex of buildings in the area of East Newton Street. The Harrison Avenue and East Newton campuses are two blocks away from each other at their closest points.¹⁴ The recognition clause in the MNA's collective-bargaining agreement covers nurses employed by BMC "at its 88 East Newton Street, Boston, Massachusetts location...." The record does not reveal whether there is a particular building with that address, but there are currently MNA nurses working at various buildings on the East Newton campus, including an inpatient facility called the Newton Pavilion,¹⁵ the Doctor's Office Building, the Preston Building, the Robinson Pavilion, and the Evans Building.¹⁶ It appears that there have been MNA nurses working at these buildings for many years.

¹¹ As noted above, the term "Menino Pavilion" is sometimes used to refer to the entire Harrison Avenue campus and sometimes used to refer just to the inpatient facility on the Harrison Avenue campus. I shall use the term to refer to the inpatient building.

¹² Director of Nursing Linda Guy testified that she believes there are SEIU nurses working in the Dowling Building, but she was not positive, and there was no other mention in the record of SEIU nurses working in that building currently.

¹³ In 1996, there were SEIU nurses working at three other buildings on the former BCH campus, the "FGH" Building, another building at either 85 or 91 East Concord Street that used to house maternity services, and, possibly, the Conte Building. It also appears that at one time there were SEIU nurses working in a building called "the Medical Building," which was once located at the site where the Moakley Building is currently being built. The Medical Building was torn down about a year before the merger, and its functions were moved into the Menino Pavilion, which was built in 1994. FGH is slated to be renovated to provide administrative office and conference space. 85 East Concord Street is currently used for Nursing Division Administration, and at least one MNA nurse has an office there.

¹⁴ Buildings belonging to the Boston University School of Medicine, which is affiliated with BMC, are located between the two campuses.

¹⁵ The Newton Pavilion is sometimes referred to as the Atrium Pavilion. All the nurses at the Newton Pavilion are represented by the MNA, except for some nurses who are employed by a company called Gambro to whom BMC outsources the work of inpatient dialysis.

¹⁶ An exhibit that portrays a map of the BMC campus indicates that the Evans Building belongs to Boston University Medical School rather than to BMC, but it is located on the East Newton side of the BMC complex and it appears that MNA nurses work there.

BMC's Nursing Division is headed by Vice President of Nursing Kathleen Davidson. Seven directors of nursing who report to Davidson oversee the nurses in various inpatient and outpatient units. Several of the directors of nursing are responsible for units on both campuses.¹⁷ Nurse managers for the individual units at each campus report to a director of nursing, and the bargaining unit RNs report to the nurse managers.¹⁸

The Moakley Building

The Moakley Building will be the first new building built by BMC since the 1996 merger. It will provide outpatient services, including a consolidated cancer care center, ambulatory surgery, and various other outpatient services. BMC broke ground on the Moakley Building in December 2003, and the building was 85 percent complete as of February 2006. Jane Barry, BMC's project director for the Moakley Building, testified that after construction is complete, BMC must obtain a certificate of occupancy for the building from the City of Boston Inspectional Services and Fire Departments, which it expects to obtain about June 1, 2006. After that, BMC will install furniture and moveable equipment, stock the building for patient care services, and train staff to use certain new clinical equipment. After that, the building must pass an inspection by the Massachusetts Department of Public Health, which must license the facility. Barry expects this inspection to occur in mid-August 2006. BMC expects to open the Moakley Building for patient care by September 1, 2006.

The Moakley Building is located adjacent to the Menino Pavilion, shares a wall and some foundation structure with the Menino Pavilion, and is, in part, built over the Menino Pavilion.¹⁹ BMC originally sought separate addresses for the two facilities, but the City of Boston's Department of Inspectional Services, which determines city addresses, denied the request because of the partial shared foundation. The Department of Inspectional Services ultimately agreed to list the range of 830-840 Harrison Avenue as a joint address for both buildings. BMC intends to use 830 Harrison Avenue as the address for the Moakley Building and 840 Harrison Avenue as the address for the Menino Pavilion, so that there are separate addresses for ease of mail delivery and identification by patients.

¹⁷ For examples, Director of Nursing Linda Guy is responsible for inpatient units at both the Menino Pavilion, which has SEIU nurses, and the Newton Pavilion, which has MNA nurses. It appears from an organization chart submitted into evidence that at least one director of nursing oversees only units at the Menino Pavilion.

¹⁸ Nurse managers are considered to be first-level managers and are not included in either bargaining unit.

¹⁹ In its application for licensure of the new facility by the Department of Public Health, BMC checked the box for "addition to existing facility" rather than "new facility." Project Director Barry testified, however, that she filled out the application that way because she viewed the application as a request for an addition to an existing BMC license, not because of the Moakley building's structural integration with another building.

When complete, the Moakley Building will provide patient care services on a basement-level floor, as well as on three above-ground floors.²⁰ The Moakley Building will have a separate external entrance and lobby. There will be internal access between the Moakley Building and the Menino Pavilion on the basement, first floor, and second floor levels, but no internal connection between the two buildings on the third floor level. Some departments in the Menino Pavilion, such as environmental services, materials management, dietary, mail service, and central processing, will service both buildings.²¹ The Moakley Building will not have its own cafeteria, but there is a cafeteria in the Menino Building.

Moakley Building Patient Care Services

Center for Cancer and Blood Disorders

BMC currently offers outpatient chemotherapy services and services for sickle cell patients at a chemotherapy clinic located at the Preston Building on the East Newton campus.²² BMC offers no outpatient chemotherapy services on the Harrison Avenue campus. The chemotherapy clinic at the Preston Building currently employs 12 nurses, who fill 8.8 full-time equivalent (f.t.e.) positions. One additional part-time vacancy has been posted. These nurses are all represented by the MNA. Chemotherapy clinic RNs must qualify for their positions by completing a chemotherapy clinical competency and an IV clinical competency.²³ Their duties involve checking patients in, verifying doctors' orders, administering intravenous (IV) chemotherapy, assessing patients for reactions, assisting with prescription refills, and triaging telephone calls. The RNs work in two different weekday shifts at the clinic, and they also rotate covering four-hour shifts on Saturday and Sunday mornings. During the weekend shifts, the nurses work on the

²⁰ There will also be a two-story "mechanical" penthouse where no patient care will be provided.

²¹ Central processing sterilizes surgical instruments. Services operating in the Moakley Building may use other services in the Menino Pavilion such as film storage, a dark room, and a utility room in the Menino Radiology Department. In its application for a license from the Department of Public Health, BMC sought a waiver of the requirement to have a refrigerator in certain areas in the Moakley Building, on the ground that those areas do not generally administer drugs that require refrigeration and they could obtain such drugs from the pharmacy in the Menino Pavilion, if necessary. In a 2003 e-mail from DPH to BMC concerning the licensing process, DPH told BMC that if facilities, e.g., sterile supplies available at the Menino Pavilion, were located on the same campus as the Moakley Building and accessible to the Moakley Building by interior corridors, BMC could describe them as "on site" rather than "off site" in its application.

²² The chemotherapy clinic is also referred to as the hematology oncology clinic.

²³ This involves taking a one-day course, passing a test, and completing six weeks of intensive training with a preceptor. The only other RNs at BMC who are qualified to do this work on the inpatient oncology unit at the Newton Pavilion on the MNA campus. Currently there is no inpatient oncology service at the Menino Pavilion on the SEIU campus.

inpatient oncology unit at the Newton Pavilion, rather than at the Preston Building. The chemotherapy clinic nurses do not float to other areas, nor do other RNs float into the chemotherapy clinic.

BMC intends to provide comprehensive care for cancer patients at the Moakley Building. To this end, BMC plans to close the chemotherapy clinic at the Preston Building around September 1, 2006, when the Moakley Building opens, and to relocate all its services to a newly created center for cancer and blood disorders on the third floor of the Moakley Building.²⁴ This area will have exam and treatment rooms, infusion bays for chemotherapy, and four drawing stations and a waiting area for phlebotomy.

There will be no major operational differences once the chemotherapy clinic is relocated to the center for cancer and blood disorders in the Moakley Building. The chemotherapy clinic will increase in size from 16 to 22 chairs and from five to seven beds. BMC anticipates hiring an extra 1.0 f.t.e. once the center for cancer and blood disorders opens due to an anticipated increase in the volume of patients, but the increased staffing has not yet been approved in the budget. The rolling stock from the Preston Building clinic, such as chairs, beds, EKG machines, suction machines, blood pressure cuffs, and dash monitors, will be moved to the center for cancer and blood disorders. The RNs working there will perform the same duties, using the same skills, as they do now in the Preston Building clinic. Their shifts will be the same at the new building, and they will continue to cover the weekend morning shifts on the inpatient oncology unit, which is currently located in the Newton Pavilion. The clinic now sends blood and urine samples to a laboratory in the Newton Pavilion for testing, but, after the move to the center for cancer and blood disorders, it will send them instead to a laboratory in the Menino Pavilion.

The chemotherapy clinic nurses at the Preston Building report to Nurse Manager Kathy Gere,²⁵ and the plan is for Gere to remain as manager of the relocated unit at the Moakley Building. Gere is currently also the nurse manager for the endocrine clinic on the East Newton/MNA campus, but she is in the process of giving up that responsibility.²⁶ BMC anticipates offering all the Preston Building chemotherapy clinic nurses a transfer to the relocated clinic at the Moakley Building, although the offers had not yet been made at the time of the hearing. Director of Nursing Linda Guy, to whom Gere reports, testified that she assumes all the nurses would accept an offer to transfer,

²⁴ BMC plans to close the clinic at the Preston Building after close of business on a Friday and reopen the clinic at the Moakley Building the following Monday.

²⁵ Since the chemotherapy clinic is considered to be part of BMC's Division of Medicine, rather than the Division of Nursing, Gere reports directly to a physician and has a "dotted line" relationship to Director of Nursing Linda Guy for nursing issues.

²⁶ Gere's removal as manager of the endocrine clinic is unrelated to the move to the Moakley Building.

because they all enjoy their work and were involved in the design and planning of the new space.

The chemotherapy clinic nurses' main contact with nurses outside the clinic occurs when outpatient chemotherapy patients must be admitted to an inpatient unit. One or two of the 40 to 50 patients seen at the clinic each day require hospitalization. When this occurs, the chemotherapy clinic nurses interact with nurses on the receiving inpatient units by telephone or by written notes about the patients, and may, rarely, assist in transferring the patients. Currently, cancer patients are always admitted to the Newton Pavilion, either to an inpatient oncology unit or a medical/surgical unit, or to the coronary care unit if intensive care is needed. As noted above, there is currently no inpatient oncology unit at the Menino Pavilion. There have been discussions as to whether the medical oncology inpatient unit should be moved from the Newton Pavilion to the Menino Pavilion after the Moakley Building opens, although no final decision has been made yet.²⁷ Regardless of the ultimate decision regarding the location of the inpatient medical oncology unit, patients from the chemotherapy clinic will be sent to the Menino Pavilion for inpatient care in emergency situations.

Radiation Oncology

BMC's radiation oncology unit, also referred to as radiation medicine, provides radiation treatment for cancer patients, who may be outpatients or inpatients. BMC currently offers this service only at the Evans Building on the East Newton campus. This unit currently employs three MNA nurses who fill 1.8 f.t.e. positions. They assess patients prior to radiation treatment, give medications orally and intravenously, respond to patients who become ill during treatment, and assess patients after treatment before discharging them home or returning them to their inpatient unit. These RNs must pass the "knowledge piece" required for the chemotherapy certification and take a special class in chemotherapy agents. The nurses work 8:00 am to 4:30 pm on weekdays, with two on duty on any given day, as well as an occasional weekend when a holiday falls on a weekday. Since inpatients from the inpatient oncology unit in the Newton Pavilion come to radiation oncology for treatment, these nurses interact over the telephone with MNA nurses from the inpatient oncology unit regarding how their patients did or their

²⁷ In October 2005, the Employer's vice chairman of medicine asked Guy to outline the pros and cons of moving the inpatient oncology unit from the Newton Pavilion to one of various places in the Menino Pavilion. Guy's December 2005 response noted that, because the Menino Pavilion is contiguous with the Moakley Building, patients admitted from the hematology/oncology clinic could be transferred to the Menino Pavilion directly by stretcher rather than by ambulance, and Menino Pavilion inpatients requiring radiation therapy could be transferred to the Moakley Building by stretcher rather than by ambulance. A committee is still considering the issue. The website for BMC's radiation oncology department states that the Moakley Building "will be connected to the Harrison Inpatient Pavilion for convenient access to inpatient cancer care, the main OR, and Radiology." Guy testified that the radiation oncologists would prefer that the medical oncology inpatient unit be moved to the Menino Pavilion, but that they do not have authority to make the decision, and no final decision has been made. A surgical oncology unit at the Newton Pavilion will definitely remain there even after the Moakley Building opens.

need for medication. The radiation oncology nurses do not float to other units, nor do other nurses float into this unit.

The radiation oncology unit at the Evans Building will close about September 1, 2006, and move to the basement of the Moakley Building.²⁸ BMC plans to close the Evans Building location on a Friday after business hours and open at the Moakley Building the following Monday. The radiation oncology unit will offer the same services during the same hours at the Moakley Building location. Radiation therapy requires the use of major equipment, such as simulators, used to mark patients for treatment, and linear accelerators, used to administer radiation. BMC will not be moving the existing major equipment from the Evans Building, in part because it is old, and in part because this equipment had to be built into the Moakley Building before construction was completed.²⁹ Minor equipment and rolling stock, such as blood pressure machines, EKG machines, and suction machines, will be moved from the Evans Building to the Moakley Building.

BMC plans to offer a transfer to the three MNA nurses in the Evans Building radiation oncology unit and expects them to accept the offer, although it has not yet made the offer. There will be no major change in their duties, although they may need some orientation to the new machines. Kim Wood is currently the nurse manager for both the radiation oncology unit and for an inpatient hematology unit at the Newton Pavilion. Guy testified that the plan is for Wood to open the radiation oncology unit at the Moakley Building, although Guy may eventually decide that it does not make sense for Wood to manage units on the two different campuses.

Ambulatory Surgery Center

BMC currently provides outpatient surgery services at three locations: 1) the main operating room (OR) suite on the Menino Pavilion, which has eight ORs; 2) the main OR suite on the third floor of the Newton Pavilion (H3), which has ten ORs; and 3) the second floor of the Newton Pavilion, commonly referred to as “H2,” which has three ORs.³⁰ The nurses who work in the Menino Pavilion ORs are represented by SEIU,

²⁸ The Moakley Building will also have an area for “brachy therapy,” where seeds are implanted in the patient for radiation therapy. Brachy therapy is currently provided at the Newton Pavilion. It is unclear from the record whether this service will be provided exclusively at the Moakley Building after it opens or at both places, and the record does not reveal whether or not the radiation oncology nurses work in this area, as well.

²⁹ Radiation oncology departments must be located in basements to protect the outside world from radiation, and the equipment must be built into the building. If BMC had transferred its old equipment from the Evans Building to the Moakley Building before construction was completed, it would have had to close down its radiation oncology service for several weeks or months during the construction process.

³⁰ A part of the Newton Pavilion is referred to as the H Building, although it is not actually a separate building.

while the nurses who work on H2 and H3 in the Newton Pavilion are represented by the MNA. When the Moakley Building opens, BMC plans to close H2, and a large portion of BMC's outpatient surgery will be performed at a new Ambulatory Surgery Center (ASC) on the second floor of the Moakley Building.

Currently, approximately 47 percent of all outpatient surgeries are performed at the Menino Pavilion, 28 percent are performed in the Newton Pavilion's main ORs, and 25 percent are performed on H2. With some exceptions,³¹ any type of outpatient surgery may currently be performed at any of the three locations, depending on the availability of an OR and the preference of the surgeon. The ORs at the Menino and Newton Pavilions are used for both inpatient and outpatient surgery, while H2 is used exclusively for outpatient surgery.

H2 currently employs 21 RNs. All of them work in H2's 12-patient pre- and post-op area, assessing and preparing patients for surgery and assessing and caring for patients in the recovery area after surgery. Seven of the nurses also work in the H2 ORs. Currently, there is some integration of the work of H2 and the main Newton Pavilion OR area/H3. In this regard, all surgery patients at the Newton Pavilion are admitted and assessed on H2, regardless of whether their surgery will be performed on H2 or H3 or whether their surgery is inpatient or outpatient. Patients who have surgery on H3 recover initially in the post anesthesia care unit (PACU) on H3 and then complete their recovery on H2, until they are ready to be discharged. Also, each of the 21 H2 nurses rotates through the role of "liaison nurse" for both H2 and H3 surgery patients. This involves assisting the families of patients who are having surgery by updating them about the patients' status, assisting them with prescriptions, giving them directions, and notifying the surgeon where to find them. For these reasons, the MNA nurses in H2 interact with the MNA nurses on H3, reporting to one another about the condition of patients. If a patient who is having outpatient surgery unexpectedly needs to be admitted to BMC, the H2 nurses give a report about the patient's condition to an MNA nurse on an inpatient unit in the Newton Pavilion.

The new ASC, to be located on the second floor of the Moakley Building, will be twice the size of H2, with six ORs and 21 pre-op/post-op beds.³² After the ASC opens, all outpatient surgery that meets certain criteria will be performed there. This includes all outpatient surgeries in which the patient is eighteen years of age or older, the patient is relatively healthy, the surgery is not expected to last more than two hours, the patient will receive fast-acting or regional anesthesia, and the patient will not require more than 30 to 90 minutes of recovery time before being discharged to home. BMC expects that 48 to 50 surgeries per day will be performed at the ASC, approximately 65 percent of all

³¹ All outpatient pediatric surgery is performed in the Menino Pavilion ORs, and all outpatient ophthalmology procedures are done on H2, because of an ophthalmologic microscope affixed to the ceiling of one of the ORs there.

³² The pre- and post-op area on H2 consists of 12 beds divided by curtains. The ASC at the Moakley Building will have 21 pre-op and post-op patient rooms.

outpatient surgeries at the hospital. Any outpatient surgeries where the patient is a child or has certain health issues,³³ and any surgeries that are expected to last more than two hours or require general anesthesia, will be performed in the Menino Pavilion or Newton Pavilion ORs.³⁴

The ASC will also have a “minor procedure room,” which will be used for both “pain procedures” and “minor procedures.” Pain procedures involve an anesthesiologist giving patients an injection along the spinal cord, sometimes under X-ray, for the relief of chronic pain. Currently, pain procedures are performed primarily on H2 with the assistance of H2 nurses. About a year ago, BMC trained six SEIU nurses on the endoscopy unit at the Menino Pavilion to assist with pain procedures to be performed in that unit one day a week, due to an increased demand for pain procedures on H2. This was a temporary measure to meet increased demand until the ASC opens. Once the ASC opens, all pain procedures will be performed there, and will no longer be performed at H2 or at the endoscopy unit at the Menino Pavilion. Minor procedures involve procedures that do not require anesthesia, such as the removal of lumps and moles, small biopsies, and minor skin grafts. Minor procedures are currently performed in outpatient clinics at both campuses, including clinics at Yawkey ACC on the Harrison Avenue campus, and the Doctor’s Office Building, on the East Newton campus. After the Moakley Building opens, these procedures will be performed at the ASC located there. Assisting with pain procedures and minor procedures will be one of the job duties of the pre- and post-surgery nurses at the ASC.

The H2 nurses currently report to Nurse Manager Dan Johnson, who is also the manager for the MNA nurses at the main Newton Pavilion OR and the PACU adjacent to the main Newton Pavilion OR. When the ASC at the Moakley Building opens, those nurses who work in the OR at the ASC will report to Nurse Manager Bill Corey, who is also the nurse manager for the SEIU nurses in the OR and PACU at the Menino Pavilion. Those nurses who work in the pre- and post-surgery area in the ASC will report to Nurse Manager Kathleen Kay, who is also the nurse manager for the MNA nurses at the medical short stay and pre-admission testing units at the Newton Pavilion.

BMC plans to have 26 nurses working in the ASC, for a total of 24.7 f.t.e.’s. Ten nurses will work in the OR, and 16 will work in the pre- and post-op areas and in the minor procedure room. In February 2006, BMC offered transfers to the ASC to all 21

³³ BMC classifies surgery patients pursuant to an American Society of Anesthesiologists (ASA) system. Those patients with an ASA classification of two or greater, meaning they have one or more health issues, will be sent to the Menino Pavilion or Newton Pavilion ORs.

³⁴ All vascular surgery will continue to be performed in the main Newton Pavilion ORs, due to technology available only there. The opening of the Moakley Building will have no impact on inpatient surgery, which will continue to be performed at the Menino Pavilion and main Newton Pavilion ORs as before.

MNA nurses who currently work on H2, and all of them have accepted the offer.³⁵ One position has been offered to and accepted by an SEIU nurse from the Menino Pavilion in settlement of a grievance. The remaining nurse positions have been posted and are open to applicants from anywhere at BMC, as well as to non-BMC nurses.

All of the equipment in the ASC will be new; none is being transferred from H2. The OR nurses at the ASC will need six months of training on the new equipment and on certain types of surgical procedures that they do not currently perform.³⁶ The pre- and post-surgery nurses will require four months of training on new types of monitoring equipment, new anesthesia modalities, and minor and pain procedures. There is no date scheduled yet for the transfers or the training, although the training is to start as soon as possible. The training must be complete before any services are provided at the ASC.³⁷

H2 is open from 5:30 am to 7:00 p.m. On the ASC, the ORs will run from 7:00 am to 5:30 p.m., and the ASC will be open additional hours for post-op patients who are recovering. All of the ASC nurses, including the OR nurses, will rotate the task of being one of two nurses on call from 11:00 p.m. to 5:30 a.m., in case a recovering surgery patient needs to stay at the ASC past 11:00 p.m. Some nurses will work different hours or a different number of hours at the ASC than they did on H2.

After H2 closes, the former H2 nurses will no longer perform the “liaison” function that they previously performed for the H2 and H3 patients. H3 nurses will take over this function for H3 patients and their families. At the ASC, unit coordinators in designated waiting rooms will act as liaison between doctors and patients’ families. Otherwise, the duties of the H2 nurses will remain largely the same when they transfer to the ASC.

³⁵ SEIU has filed a grievance over the transfer offers that BMC has made to MNA nurses for various positions at the Moakley Building, on the ground that the positions should have been posted and filled pursuant to SEIU’s collective-bargaining agreement.

³⁶ Some orthopedic, genital-urinary, and laser procedures will be done at the ASC that were not done on H2, due to a lack of certain technology at H2. The new equipment includes lasers, PHACO machines, pumps, and equipment for minimally invasive procedures, which are performed with a scope that plays on a video monitor. Minimally invasive surgery is currently done on H2, but the new ORs will use a new type of equipment that is digital. The OR nurses will be trained to assist in these minimally invasive procedures in the ORs at other local hospitals, in a mock OR set up by an equipment vendor, and in one OR on H3 in the Newton Pavilion where minimally invasive procedures are currently performed. The OR nurses will also be trained in using a new on-line documentation system in the OR rather than the manual system currently used on H2, and in using new point-of-care sterilizers that will be in the ORs. All nurses will be trained to use a new communication system involving microphones worn around the neck that will link the OR and pre- and post-op nurses.

³⁷ BMC expected to provide services at the ASC on or before September 1, 2006, and the H2 nurses who were offered a transfer were given that date initially, but that date is no longer operative because of the necessary training before the ASC is opened.

Regarding integration with the other BMC facilities, ASC surgery patients will have their pre-admission testing done at the pre-admission testing center at the Newton Pavilion.³⁸ After the move to the ASC, the former H2 nurses will no longer admit and discharge surgery patients for H3 or have contact with the MNA nurses on H3. Currently, in the rare case when an H2 patient requires hospitalization due to complications, the patient is admitted to a Newton Pavilion inpatient unit. Once the Moakley Building opens, in the rare case when an ASC patient cannot be discharged as planned, due to complications, the patient will remain in the ASC recovery area overnight to be monitored by an on-call ASC nurse. ASC nurses are not generally expected to have contact with SEIU OR nurses or inpatient unit nurses at the Menino Pavilion. However, the second floor of the Moakley Building, where the ASC will be located, has an opening leading to the Menino Pavilion OR area, so that in case an ASC surgery patient has an adverse event, the patient may be moved quickly to the Menino Pavilion OR. Some items for use in the ASC ORs will be sterilized in the Menino Pavilion's central processing department, while others will be sterilized at the ASC.

Center for Digestive Disorders

BMC currently operates a gastroenterology (GI medicine) clinic on the fourth floor of the Doctor's Office Building (DOB) on the East Newton campus, a GI surgery clinic on the seventh floor of the DOB, and a related "motility" laboratory on the second floor of the DOB.³⁹ The GI medicine clinic has two full-time nurses, Patricia McCorey and Margaret O'Connor, both of whom are represented by the MNA. They work from 8 am to 5 p.m. weekdays. O'Connor has an office at BMC's 85 East Concord Street Building, which is on the Harrison Avenue campus, but she goes to the DOB outpatient clinic when the physicians are treating patients there and sees their inpatients, as well.

The GI surgery clinic has two nurses, Linda Alexander and Siobhan Nevins, who are also represented by the MNA. The two nurses share a job; one works two days a week and the other three days a week, from 8 am to 5 p.m. These nurses specialize in wound care and ostomy care. They see the patients of three GI surgeons, who currently may be either inpatient at the Newton Pavilion on the East Newton campus or outpatients at the DOB clinic. Anne Murray-Corliss, a wound and ostomy care nurse who works at the Menino Pavilion and the Yawkey ACC, which are SEIU facilities, substitutes for Alexander and Nevins, and they cover for Murray-Corliss in her absence.

When the Moakley Building opens, the GI medicine clinic, the GI surgery clinic, and the motility laboratory will be consolidated, for the convenience of patients who need both medical and surgical services, into a Center for Digestive Disorders on the second

³⁸ This department also does pre-admission testing for some Menino Pavilion surgery patients.

³⁹ At one time there was a GI clinic at the Harrison Avenue campus, but it was consolidated into the clinic at the DOB.

floor of the Moakley Building. The GI physicians, with the exception of perhaps one surgeon, will close their offices at the DOB and move to the Moakley Building.

The work of the four nurses will “migrate” to the center for digestive disorders at the Moakley Building, and their duties and hours will remain the same. McCorey will move to the center for digestive disorders. O’Connor will work at the center for digestive disorders when the GI medicine physicians are working at the outpatient clinic there; the rest of her time she will see inpatients or work in her office at 85 East Concord Street. Alexander and Nevins will work at the center for digestive disorders whenever the three surgeons they work with are scheduled to be there, approximately three four-hour sessions per week split between them. They will see the surgeons’ inpatients wherever they are and have contact with RNs who work on the inpatient units when they do so. The surgeons’ inpatients could be either at the Menino Pavilion or the Newton Pavilion.⁴⁰ Corliss will continue to substitute for Alexander and Nevins after the move to the Moakley Building. The four nurses report to the division of nursing for nursing matters such as their credentialing, and to the physicians at their respective clinics regarding clinical issues. There is no plan to alter the supervisory arrangement after the move.⁴¹

The physicians also perform endoscopy at the endoscopy unit located on the second floor of the Menino Pavilion on the Harrison Avenue campus, which can be accessed through an internal corridor leading from the Moakley Building to the Menino Pavilion. The center for digestive disorders was placed next to the Menino Pavilion endoscopy unit for clinical reasons. The endoscopy unit at the Menino Pavilion employs SEIU nurses who assist the doctors performing endoscopies. The nurses at the center for digestive disorders could interact with the endoscopy nurses, although neither group would be qualified to work in the other’s area. Endoscopy is also performed at the Newton Pavilion, at least on an inpatient basis, and the nurses from the center for digestive disorders could interact with nurses there, as well.⁴²

Otolaryngology Clinic

⁴⁰ The nurses follow the patients of the physicians with whom they are most closely associated. Some of the physicians work predominantly on one campus or the other, but they do not work exclusively on either campus.

⁴¹ The record is not clear as to precisely whom they report to in the division of nursing, but it appears that they report to Maureen Hilchey-Masters, a nurse who oversees nurses in BMC’s outpatient clinics, and who is responsible for clinics on both campuses.

⁴² Notwithstanding a “Center for Digestive Disorders” sign at the endoscopy unit in the Menino Pavilion, BMC Director of Peri-Operative Services Gail Spinale testified that, currently, the center for digestive disorders is a “virtual marketing concept” that exists in multiple physical locations, and that the endoscopy unit is just one of the specialty areas that make up the virtual Center. When the Moakley Building opens, the Center for Digestive Disorders will have a physical location at which experts in various specialties, including gastroenterologists, GI surgeons, nurses, nutritionists, psychiatrists, oncologists, urologists, and radiologists will provide services in connection with digestive disorders, at one place.

BMC currently operates otolaryngology (ENT) clinics at both the DOB on the East Newton Campus and at the Yawkey ACC on the Harrison Avenue Campus. RN Elizabeth Kendrick, who is in the SEIU unit, works four hours per week at the ENT clinic at the Yawkey ACC. Kendrick's primary job at BMC is a 20-hour per week position in a surgical specialties clinic at the Yawkey ACC. When the Moakley Building opens, the ENT clinics at both the DOB and Yawkey ACC will close and consolidate into the first floor of the Moakley Building, and the current staff at both offices will move to the Moakley Building. BMC has offered to have Kendrick continue to work at the ENT clinic four hours a week after the move to the Moakley Building, and she has agreed to do so. She has not been given a start date. Kendrick reports to Maureen Hilchey-Masters, an RN who is the clinical practice manager for some of BMC's clinics, who has responsibility for BMC clinics on both the Harrison Avenue and East Newton campuses.

Multi-Disciplinary Clinic and Breast Health Clinic

BMC plans to open a multi-disciplinary clinic on the third floor of the Moakley Building for cancer patients. The doctors who will work there are currently located in offices throughout the East Newton and Harrison Avenue campuses. The multi-disciplinary clinic will be new in the sense that cancer patients will be able, for the first time, to see multiple doctors with various specialties at the same place. Six doctors who specialize in surgical oncology will move their offices from the DOB on the East Newton campus to the Moakley Building after it opens. Other doctors will see patients at the multi-disciplinary clinic as needed, but their offices will remain at their current locations.

RN Kathy Gere will be the nurse manager for the multi-disciplinary clinic, as well as for the chemotherapy clinic next to it. The multi-disciplinary clinic will have no staff nurses when the Moakley Building opens, but BMC will probably add a staff nurse within a year as the volume of patients changes. Some nurses will float in and out, as well.

BMC currently operates a breast clinic at the Yawkey ACC and two breast clinics at the DOB. When the Moakley Building opens, those clinics will be discontinued and will be relocated to the first floor of the Moakley Building in an area referred to as "breast health."⁴³ Currently, nurses from the surgical specialties clinic at the Yawkey ACC go to the Yawkey breast clinic if needed, although not on a regular basis. No nurses are permanently assigned to the DOB breast clinics; they are brought from elsewhere if there is a need.

There is no plan for a nurse to be permanently assigned to the breast health area at the Moakley Building. However, RN Noreen O'Shea currently works with Doctor Stone and Doctor Cavanaugh, surgical oncologists who will be moving their offices from the DOB to the Moakley Building, where they will see patients at both the multi-disciplinary

⁴³ This area appears as "breast health" on a floor plan of the Moakley Building, but was also referred to at the hearing as the Belken breast center.

clinic and the breast health clinic. O'Shea has an office at the Robinson Building on the East Newton campus. She works 40 hours per week. Her job is to follow Stone's and Cavanaugh's surgical patients, regardless of location, and she will continue to do so after the two doctors move to the Moakley Building. She will continue to see their inpatients at the Newton Pavilion and will see their outpatients at the multi-disciplinary clinic and the breast health clinic at the Moakley Building during about three four-hour sessions per week.⁴⁴

Nuclear Medicine, Mammography, and PET/CT

BMC's radiology department provides various diagnostic services, including nuclear medicine, mammography, CAT scans, MRI, ultrasound, X-ray, and special procedures, at various locations. The radiology department currently employs 12 nurses, six of whom work at the Newton Pavilion, and six of whom work on the first floor of the Menino Pavilion. They rotate between the various areas within the radiology department, assisting technicians and radiologists with procedures and evaluating and monitoring patients before and after procedures. The six nurses at the Menino Pavilion are represented by SEIU, while the six nurses at the Newton Pavilion are represented by the MNA. All twelve report to Nurse Manager Tom Modini.

Nuclear medicine studies entail diagnostic studies of various body parts and are performed by technologists. Nuclear medicine is currently performed both at the Yawkey ACC on the Harrison Avenue campus and on the East Newton campus. An SEIU nurse from the radiology department at the Menino Pavilion goes to assist in nuclear medicine if, for example, the technologist who works there is unable to start an IV or if a patient has an allergic reaction to drugs that are injected. There is rarely a need for nursing assistance in nuclear medicine. When the Moakley Building opens, BMC will close the nuclear medicine section at the Yawkey ACC and relocate it to the first floor of the Moakley Building. The SEIU nurses from the radiology department at the Menino Pavilion will provide the same support to the nuclear medicine area at the Moakley Building as they do now at the Yawkey ACC. The nuclear medicine service on the East Newton campus will remain in place.

Mammography is currently performed both at the DOB and at the Yawkey ACC. When the Moakley Building opens, the radiology department will discontinue offering mammography at both of those locations and begin offering it in a breast imaging area on the first floor of the Moakley Building. The new breast imaging area will have new, digital equipment. No nurses work in mammography now and none will be assigned there after the move. Finally, when the Moakley Building opens, the radiology department will offer positron emissions testing (PET) for the first time, as well as computerized axial tomography (CT), on the first floor of the Moakley Building near the

⁴⁴ Although there was no testimony to this effect, it appears from the location of O'Shea's office at the Robinson Building and work at the DOB and Newton Pavilion that she is currently an MNA nurse.

nuclear medicine area.⁴⁵ PET and CT work is performed by technologists; no nurses will work there, beyond the general support role played by the nurses in the radiology department at the Menino Pavilion.

There will be some integration between the areas of the radiology department in the Moakley Building and the Menino Pavilion. The radiology department in the Menino Pavilion and the PET/CT/nuclear medicine area in the Moakley Building are both located on the first floor and will be connected by a door. Patients who arrive for tests in the PET/CT/nuclear medicine area at the Moakley Building will initially check in at the radiology reception area in the Menino Pavilion before proceeding to the Moakley Building side.⁴⁶ Menino Pavilion inpatients and emergency room patients who need nuclear medicine services will also be sent to the Moakley Building through the radiology department. The radiology department sections in the Moakley Building will use a utility room located in the radiology department in the Menino Pavilion, which may also store films for the Moakley Building if necessary.

Bargaining history

Recognition clauses

As noted above, in the first contract that BMC and SEIU negotiated, effective July 1, 1996, BMC agreed to recognize SEIU as the exclusive representative of RNs, advanced practice nurses, and per diem nurses “employed by the Hospital at its 818 Harrison Avenue and 249 River Street, Boston, Massachusetts locations....” There have been several successor agreements, and that same recognition clause appears in the current SEIU contract, which is effective October 1, 2003 through September 30, 2006.⁴⁷

In the current collective-bargaining agreement between the MNA and BMC, which is effective from February 4, 2005 through February 2, 2008, BMC agrees to recognize the MNA as the exclusive representative of all RNs, advanced practice nurses, and per diem nurses “employed by the Hospital at its 88 East Newton Street, Boston, Massachusetts location....”⁴⁸

⁴⁵ The record is unclear as to whether CT is a new service at BMC. Director of Radiology Jeffrey Schuster testified at one point that PET/CT is not currently performed at BMC and at another point that there are CT scans at the Menino Pavilion and on the East Newton campus.

⁴⁶ Mammography patients will proceed directly to the breast imaging area in the Moakley Building.

⁴⁷ In 2001, BMC proposed to amend SEIU’s recognition clause by deleting “818 Harrison Avenue” and replacing it with “One Boston Medical Center Place,” but the proposal was withdrawn.

⁴⁸ The first contract between the MNA and BMC is not in the record.

In negotiations for the current MNA agreement, the MNA proposed to modify its recognition clause to extend coverage to nurses employed at “the Moakley Medical Services Building at the E. Concord Location,” but BMC did not accept the MNA’s proposal, and this language does not appear in the current agreement.

After-acquired clauses

Both the MNA and SEIU agreements contain the following identical side letter of agreement:

Where the Union can demonstrate that employees of a new unit or site constitute a proper accretion to the existing bargaining unit, or where the Union can demonstrate a majority showing in such new unit or site, the Hospital shall recognize the Union as the exclusive bargaining representative of such employees and shall apply all the appropriate terms of the collective bargaining agreement.

Contract provisions referencing separate campuses

Both the first SEIU and current SEIU contracts include the following language with respect to float pools:⁴⁹

Float pool RN’s who have been oriented shall be utilized whenever possible for floating between campuses, and RN’s who are not regularly assigned to the float pool shall only be used in extreme circumstances after volunteers have been solicited. When RN’s from the former Boston City Hospital (“BCH”) campus need to be floated to the former Boston University Medical Center (“BUMCH”) campus on a temporary basis and vice versa and such RN’s are represented by a labor organization, they shall carry with them their wages and benefits and shall continue to accrue seniority, as well as any rights or privileges they may have under their labor agreement.

Both the first and current SEIU contracts, as well as the current MNA contract, include the following language in articles concerning reductions in force:⁵⁰

If the Hospital determines that a specific unit is to be relocated to another campus, any registered nurse assigned to the affected unit may elect a voluntary layoff without the ability to exercise bumping rights in lieu of accepting a transfer.

⁴⁹ This language appears in Article 32 of the first contract and in Article 37 of the current contract.

⁵⁰ This language appears in Article 16 of the first SEIU contract, Article 17 of the current SEIU contract, and Article 26 of the current MNA contract.

The reduction in force articles in the SEIU contract include lists of units into which nurses may exercise their bumping rights. The units are grouped by campus, so that SEIU nurses may bump only into units listed under the heading “Former BCH Campus” and MNA nurses may bump only into units listed under the heading “Former BUMCH Campus.” SEIU representative Judith Coughlin, who was present at the negotiations leading to the first contract, testified that MNA representatives were at the bargaining table when this language was agreed to.

The following additional language was added to the MNA agreement for the first time in the current contract:

Through February 2, 2008, if a unit is relocated to another campus and the RN would be outside the MNA bargaining unit, the RN may elect a voluntary layoff or exercise bumping rights in lieu of accepting a transfer. This provision shall expire and have no force and effect after February 2, 2008.

Prior relocations of units to another campus

It appears that, since the 1996 merger, there have been five or six instances in which BMC relocated a unit employing nurses from one campus to the other and/or, in some cases, consolidated services previously offered at both campuses to one campus.

At the time of the merger, BMC operated a cardiac care unit (CCU) in the Menino Pavilion, an SEIU facility.⁵¹ In 1997, BMC closed the CCU at the Menino Pavilion and relocated and/or consolidated it with a CCU on the East Newton campus, an MNA facility.⁵² The jobs of about 40 SEIU nurses were eliminated as a result of the closure of the Menino Pavilion CCU. The SEIU RNs were not offered transfers to the CCU on the East Newton campus, but were offered an opportunity to bid on other positions on the Harrison Avenue campus.

At the time of the merger, BMC operated an outpatient chemotherapy clinic on the former BCH campus. In 1997, BMC notified four SEIU nurses at the clinic that their positions were being eliminated due to a consolidation and relocation of the clinic to the

⁵¹ RN Christine Kareh, who began to work at the CCU in 1982, testified that the CCU was originally located in a building called “the Medical Building,” which was located at the site where the Moakley Building is now. About a year prior to the 1996 merger, the Medical Building was torn down, and the CCU was moved into what was then called the “new inpatient facility,” now called the Menino Pavilion.

⁵² Director of Nursing Operations Linda Guy, who was not employed by BMC at the time and had no personal knowledge of these events, testified that she “researched” the issue and learned that at the time of the merger, there was a CCU at the Evans Building on the East Newton campus. After the merger, the CCU was moved to its present location in the Newton Pavilion.

Preston Building, an MNA facility. RN Agatha White, whose job was one of those eliminated, testified that the SEIU nurses were not offered a transfer; they were told that the positions were MNA positions and that there were qualified MNA RNs at the other campus who would get the positions.⁵³ White moved into another SEIU position.

At the time of the merger, BMC operated two diabetes clinics, one at the Yawkey Center (an SEIU facility), and one somewhere on the East Newton campus (an MNA facility). At some point in the 1990's, BMC closed the Yawkey Center diabetes clinic and consolidated it with the existing East Newton diabetes clinic, so that there was thereafter one BMC diabetes clinic located at the Preston Building (an MNA facility). At the time of the consolidation, two SEIU nurses at the Yawkey Center were offered and accepted transfers to the Preston Building and became MNA nurses after the transfers.

At the time of the merger, there was a spinal cord unit at the East Newton campus that employed MNA nurses. In 1998, the unit was moved to the Menino Pavilion, an SEIU facility, and renamed the "rehab unit." The jobs were posted on both campuses and filled according to the SEIU contract. Two MNA nurses were among the nurses who filled the positions there. After the positions were filled, all of the nurses on the rehab unit were represented by SEIU.

In the late 1990's, BMC closed a GI clinic that it operated in the Yawkey ACC, an SEIU facility, and consolidated it with a GI clinic that it operated at the DOB, an MNA facility. One SEIU nurse from the Yawkey ACC GI clinic was offered and accepted a transfer to the GI clinic at the DOB. She was represented by the MNA after the transfer.

In 2002, BMC operated endoscopy units at both the Menino Pavilion and the Newton Pavilion. In June 2002, BMC posted five RN positions at the endoscopy unit at the Menino Pavilion, pursuant to a settlement agreement with SEIU. A few days later, BMC notified an MNA RN who worked on the endoscopy unit at the Newton Pavilion that her position was being eliminated as part of a reorganization of services.⁵⁴ She applied and was accepted for one of the endoscopy positions at the Menino Pavilion and thereafter was represented by SEIU.

⁵³ Guy, who was not employed by BMC at the time of these events and had no personal knowledge of them either, testified that she researched the issue by speaking to Cynthia Abreau from the department of medicine, who oversaw the chemotherapy clinic at the Preston Building at the time. Guy testified that Abreau told her that, at the time of the 1996 merger, there were outpatient chemotherapy clinics at both the Harrison Avenue campus and at the Preston Building on the East Newton campus. After the merger, both clinics were consolidated into the location at the Preston Building. Abreau told Guy that no additional positions were posted at the Preston Building as a result of the consolidation.

⁵⁴ SEIU representative Karen Bradbury, who testified about this incident, did not know why the position of the MNA nurse at the Newton Pavilion was eliminated and could not recall if it was due to a consolidation of the two endoscopy units.

ANALYSIS

I. PROCEDURAL ISSUES

The after-acquired clauses

The MNA argues, citing *Raley's*⁵⁵ and *Central Parking System, Inc.*,⁵⁶ that BMC has waived its right to use the Board's processes to resolve this dispute by virtue of the "after-acquired" clause in the MNA agreement, pursuant to which the MNA would seek to compel BMC to recognize the MNA and apply its contract at the new site, if the MNA can demonstrate majority status there. The MNA asserts that the parties have negotiated a valid contractual method for resolving representational issues at the new building, and that taking action on the petitions prematurely would strip the MNA of its contractual right. It asserts that the Region should dismiss the petitions or hold them in abeyance until the MNA has been afforded a reasonable period of time after a representative complement of employees has filled the positions to exercise its contractual right.

I find that BMC is not foreclosed by the after-acquired clause from using the Board's processes to resolve the issue of the unit to which the Moakley Building employees will belong. The determination of questions of representation, accretion, and appropriate unit do not depend upon contract interpretation, but involve application of statutory policy, standards and criteria, which are matters for the Board to decide. *Tweddle Litho, Inc.*⁵⁷ Further, the Board recently cautioned about inferring a waiver of access to the Board's processes from an after-acquired clause, and it kept open the possibility that it might not abide by *Central Parking*. *Shaw's Supermarkets*.⁵⁸ Finally, given the fact that any attempt by the MNA to exercise its contractual rights with respect to these employees would likely be an ex parte proceeding with respect to SEIU (which also has its own contractual after-acquired clause), it would better serve the purposes of the Act for the Board to address the issues present here where all the parties have fully participated in the proceeding before it than to decline to assert jurisdiction and subject the parties to additional litigation, expense, and delay. See *Crown Cork & Seal Company, Inc.*⁵⁹

⁵⁵ 336 NLRB 374 (2001).

⁵⁶ 335 NLRB 390 (2001).

⁵⁷ 337 NLRB 686 (2002), citing *Marion Power Shovel*, 230 NLRB 576, 577-578 (1977).

⁵⁸ 343 NLRB No. 105, slip op. at 1-2 (Dec. 8, 2004). The Board's recent decision to grant review for a second time in *Shaw's Supermarkets*, 1-RM-1267 (unpublished Order dated March 15, 2006), further calls into question this area of the law.

⁵⁹ 203 NLRB 171 (1973).

Prematurity

The MNA contended at the hearing that it is impossible to analyze the community of interest between the employees at the Moakley Building and other unit employees for purposes of an accretion analysis at a time when the positions are not yet filled.⁶⁰ I find, in agreement with BMC and SEIU, that the facts are sufficiently developed to resolve the matter. In this regard, matters such as bargaining history, evidence regarding past relocations, the location and physical description of the Moakley Building and its integration with the Menino Pavilion, the medical services that will be provided at the Moakley Building, the equipment that will be used there, the duties of the nurses who will work there, and, in many cases, the identity of the nurses who will work there, are already known. I also find, in agreement with BMC, that dismissing the petitions as premature or otherwise deferring a resolution of the matter would not be appropriate, because it would leave the parties in a state of confusion as to the parameters of their bargaining obligations. *Southwestern Bell Telephone Co.*⁶¹

The Wallace-Murray rule

The MNA asserts that both the BMC and SEIU petitions are barred by the *Wallace-Murray* rule.⁶² Under that rule, the Board will not entertain a petition for unit clarification during the term of a contract to modify the composition of a unit that is clearly defined in the collective-bargaining agreement, on the ground that to do so would be disruptive to the bargaining relationship. Here, the petitions were filed during the term of the SEIU/BMC agreement. The MNA argues that SEIU's recognition clause unambiguously excludes the Moakley Building employees, so that the petitions are untimely; SEIU argues that its petition is not barred by the *Wallace-Murray* rule because its recognition clause does not expressly exclude positions in the Moakley Building.⁶³

SEIU argues, further, that any accretion of employees located in the Moakley Building to the MNA bargaining unit is barred by the *Wallace-Murray* rule. In this regard, it argues that the MNA's recognition clause covering 88 East Newton Street could not possibly include the Moakley Building. It also argues that express exclusion of the

⁶⁰ I note that the MNA did not pursue this argument in its post-hearing brief.

⁶¹ 222 NLRB 407, 411 (1976).

⁶² *Wallace-Murray Corp.*, 192 NLRB 1090 (1971).

⁶³ In this regard, the MNA contends that the street address in SEIU's recognition clause unambiguously limits its reach to positions in those buildings that comprised the historical unit that existed at the time of the merger in 1996, so that the positions in the new building are logically excluded from that unit definition. SEIU argues that the reach of the "818 Harrison Avenue" address in the clause is ambiguous and that the historical bargaining unit, bargaining history, other contractual terms that demonstrate campus-based representation, and the history of campus-based representation after past relocations establish that the term is coterminous with the former BCH campus, within which the Moakley Building is located.

Moakley Building from the MNA's recognition clause is also demonstrated by the fact that, during negotiations for its current agreement, the MNA proposed to add the Moakley Building positions to its unit and then withdrew its proposal.

I find, in reliance on *Bethlehem Steel Corp.*,⁶⁴ that the petitions are not untimely. In that case, the employer announced plans to relocate product marketing employees from its Pennsylvania facility to its unionized facility in Maryland. The union and the employer discussed the unit placement of these employees during contract negotiations, but did not reach agreement about their placement. The parties entered into a new collective-bargaining agreement, and no party reserved the right to file a UC petition after contract ratification. Two years later, during the term of a six-year agreement, the employer filed a unit clarification petition seeking to exclude the relocated product marketing employees from the unit. The Board found that the petition was timely filed because it did not seek to modify the bargaining unit, but rather, sought to have the Board determine the placement of classifications that had not yet been relocated when negotiations for a new contract were completed and, therefore, did not come into existence at the Maryland facility until after the contract was executed. I find here, as in *Bethlehem Steel Corp.*, that the placement of these newly relocated employees was not specifically covered one way or the other in either the SEIU or MNA contract, that the nurses' relocation to the new facility since the parties executed their contracts has created a dispute, and that it would not, therefore, be disruptive of the parties' collective-bargaining relationships to entertain a UC petition at this time.⁶⁵

II. THE MERITS

The parties have argued several different lines of cases and methods of analysis in support of their respective positions, none of which appear to be exactly on all fours with the case at hand. I find, on balance, that whichever method of analysis is employed, the relocation of certain services and MNA nurses from the MNA-represented East Newton campus to the Moakley Building a few blocks away will not destroy the integrity of the existing MNA unit. In this regard, I note that after the Moakley Building opens, the same MNA nurses will perform the same work under, for the most part, the same supervision and working conditions as before. Therefore, the appropriateness of the historical unit will remain intact, and the MNA nurses who will be relocated to the Moakley Building should remain in the MNA unit. I further find that the very few non-MNA RNs who are permanently assigned to the Moakley Building, whether they are new hires or transferees from the SEIU unit, also belong in the MNA unit.

⁶⁴ 329 NLRB 241 (1999).

⁶⁵ I acknowledge that the Board noted in *Bethlehem Steel Corp.* that it was questionable whether the Board would have entertained a UC petition before the actual transfer of the product marketing employees. 329 NLRB at 242 fn. 3. I find, nonetheless, as discussed above, that given the certainty of the relocation and the facts surrounding it, that dismissing the petitions as premature prior to the actual relocation of these employees would leave the parties in an undue state of confusion as to their bargaining obligations.

Marion Power Shovel Co.

*Marion Power Shovel Co., Inc.*⁶⁶ is instructive of the Board's approach in cases involving competing representational claims by two unions. In that case, as here, two unions represented employees engaged in similar functions at the employer's two plants, as an outgrowth of its historical development. The Steelworkers represented employees at Plant 1, and the Machinists represented employees at the Osgood Plant/Plant 2, which had been purchased later. Subsequently, the employer transferred some work and employees from Plant 1 to Plant 2, resulting in a dispute: the Machinists claimed to represent all employees at Plant 2, while the Steelworkers claimed to represent all Plant 2 employees doing work transferred to Plant 2 from Plant 1. By agreement of all parties, the Steelworkers were eventually granted jurisdiction over the transferred employees. Still later, the employer completed a major expansion of the Plant 2 facilities and moved still more production equipment and employees from Plant 1 to new buildings at Plant 2, and also hired new employees to work there. Faced with conflicting demands for recognition from both unions, the employer filed a UC petition.

The Board held, first, that no question concerning representation was raised because the added facilities were merely an extension of the employer's existing plants. The employees in the expansion buildings did not constitute a separate appropriate unit because, while the amount of work had been increased and the manner of accomplishing it had been relocated, employees in the same job classifications were performing the same character of work using the same skills that obtained in Plants 1 and 2. Because a self-determination election might be necessary if inclusion in either the Steelworkers or Machinists units were equally appropriate, the Board then considered whether the employees in the expansion facility could constitute an accretion to either unit. I find, similarly, that no question concerning representation is raised by the expansion and relocation of BMC's operations to the Moakley Building and, therefore, I must consider whether accretion to either the MNA or SEIU unit is appropriate.⁶⁷ For the following reasons, I find that the employees located in the Moakley Building are properly accreted to the MNA unit.

Bargaining history

The record here establishes a substantial history of bargaining in two separate nurses' units, both before and after the merger. The Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances. *Marion Power Shovel*.⁶⁸

⁶⁶ 230 NLRB 576 (1977).

⁶⁷ I note that the small number of nurses working in the Moakley Building and at issue here, about 48, relative to the 600 or 900 nurses in the MNA and SEIU units, supports a finding that accretion is appropriate.

⁶⁸ *Supra* at 579.

I do not find SEIU's claim to the Moakley Building employees based on bargaining history to be persuasive, however. SEIU's claim is based, in large part, on its recognition clause, which SEIU asserts covers all employees in the RN classification who work on the Harrison Avenue campus, where the Moakley Building is located. The Board in *Marion Power Shovel* found that the language of a location-based recognition clause was not dispositive of the appropriateness of accretion to an existing unit, and I decline to rely on the recognition clauses here.⁶⁹ "[T]he Board does not automatically accrete employees at a new [facility] solely because the unit description includes all the employer's [facilities], present and future, in a geographic area." *Superior Protection, Inc.*⁷⁰

Nor am I persuaded by the history of prior relocations of units from one campus to another, after which the nurses at the new location were represented by the MNA if the unit was relocated to the East Newton campus and by SEIU if the unit was relocated to the Harrison Avenue campus. None of these incidents involved relocation to a new facility and, more important, the representation of those relocated nurses was resolved by private agreement of the parties, not by the Board.

Accretion factors

I find, on balance, that the Moakley Building nurses share more of a community of interest with the MNA unit than with the SEIU unit. After the move is completed, the relocated nurses, most of whom are MNA nurses, will be performing the same duties, using the same skills, as they did before. There will be more Moakley Building nurses who share common supervision with MNA nurses than who share supervision with SEIU nurses. Thus, while the 10 OR nurses in the ASC will share common first-level supervision with SEIU OR nurses at the Menino Pavilion, 19 Moakley nurses, i.e., the 3 RNs in radiation oncology and the 16 RNs who work in the pre- and post-op area in the ASC, will share common first-level supervision with other units of MNA nurses at the Newton Pavilion. While the supervisory arrangement for the remaining Moakley

⁶⁹ I also find, in agreement with the MNA, that there is no evidence in SEIU's recognition clause of a shared intent to expand the unit to any new building within the geographic confines of the Harrison Avenue campus. To the contrary, the after-acquired clause in the SEIU contract demonstrates the opposite, that the parties contemplated the possibility of a new building and contracted with respect to how to handle the issue of recognition in that eventuality. In any event, the language of the recognition clause does not settle the matter. As the *Marion Power Shovel* Board noted, "Even if we were to agree, which we do not, that the phrase "Osgood plant" encompasses all structures, new and old, in the Plant 2 area rather than just those acquired from the Osgood Company in 1955, we would have difficulty finding the expansion employees an accretion to the Machinists unit." *Marion Power Shovel*, supra at 578. The facts of the present case, as discussed below, also argue against an accretion of the Moakley Building employees to the SEIU unit.

⁷⁰ 341 NLRB 267, 268 (2004), citing *Coca Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993).

Building nurses does not, in and of itself, favor accretion to one unit over the other,⁷¹ I note that, with the exception of the SEIU transferee who will work in the otolaryngology clinic, the other nurses will all be MNA transferees whose supervisor will be the same before and after the move.

As for permanent interchange, 41 of the Moakley Building nurses, the vast majority, will be transferees from the MNA unit, and only two of the transferees will be SEIU nurses.⁷² There is no evidence that there will be temporary interchange between the Moakley Building nurses and MNA or SEIU unit nurses, with the exception that one SEIU and two Moakley Building wound and ostomy care nurses will cover for one another during absences. This will not represent a change from the status quo, however, as those three nurses cover for one another now, and I find that this limited temporary interchange between Moakley Building and SEIU nurses is outweighed by the factors that support accretion to the MNA unit.⁷³

It does not appear that most of the Moakley Building nurses will have significant work-related contact with either MNA or SEIU nurses on a daily basis, although this, too, does not represent a change from the status quo. I note, however, that after the Moakley Building opens, RNs in the center for cancer and blood disorders will continue to work weekends at the Newton Pavilion, an MNA facility, and will continue to send one or two patients per day to inpatient units at the Newton Pavilion, which requires some contact with the MNA nurses there.⁷⁴ While the transfer of the 21 H2 nurses to the ASC at the Moakley Building will eliminate their daily contact with the MNA nurses on H3, there is no evidence that they will have any contact with the SEIU OR nurses in the Menino Pavilion after the move. Although the SEIU nurses from the Menino Pavilion radiology department may assist in the nuclear medicine area in the Moakley Building from time to

⁷¹ The 13 RNs in the center for cancer and blood disorders will not share common first-level supervision with either MNA or SEIU nurses. It appears that the 5 nurses who work in the center for digestive disorders and the otolaryngology clinic will, as before the move, be supervised by a clinical practice manager who is responsible for overseeing RNs on both campuses.

⁷² In this regard, 13 MNA nurses (including one part-time position that is currently posted), will be transferred to the center for cancer and blood disorders, 3 to radiation oncology, 21 to the ambulatory surgery center, 4 to the center for digestive disorders, and one to the multi-disciplinary and breast health clinics, for a total of 42. One SEIU nurse will be transferred to the ambulatory surgery center and one to the otolaryngology clinic, for a total of two. Finally, four additional positions at the ambulatory surgery center remain to be filled, and BMC will possibly hire an additional 1.0 f.t.e. RN position at the center for blood and cancer disorders and one RN position at the multi-disciplinary clinic in the future.

⁷³ I note that there is no record evidence as to the frequency with which the wound and ostomy care nurses substitute for one another.

⁷⁴ I find that the possibility that the inpatient oncology unit may be moved from the Newton Pavilion to the Menino Pavilion is too speculative to form a basis for a finding that the Moakley Building nurses will have contact with SEIU nurses at the Menino Pavilion.

time, the evidence shows that this will be rare and, in any event, will involve contact with technologists rather than with any nurses in the Moakley Building. It is true that the nurse who will work four hours a week in the Moakley Building otolaryngology clinic will have contact with SEIU nurses due to her primary responsibility as a nurse at the Yawkey ACC, an SEIU facility. I find, however, that the fact that one nurse who works in the Moakley Building on a very part-time basis will have contact with SEIU nurses does not detract from the Moakley Building nurses' overall greater community of interest with the MNA unit employees.

Finally, I find that the location of the Moakley Building on the Harrison Avenue campus does not warrant a different result. While the Moakley Building is geographically closer to the SEIU facilities, it is only two blocks away from the MNA facilities, not far enough away to make a practical difference. It is true, as SEIU argues, that there will be some functional integration between the Moakley Building and the SEIU/Menino Pavilion. In this regard, the two buildings share a foundation, a wall, and an address, and will be connected by internal corridors. The Menino Pavilion will provide various services for the Moakley Building, such as central processing, mail, materials management, dietary services, laboratory services, and the like, and the Moakley Building ASC and center for digestive disorders were placed near the Menino Pavilion ORs and endoscopy units for clinical reasons. The physical integration of the buildings and shared non-nursing services is far less significant, however, than the fact that the vast majority of Moakley Building nurses will be MNA transferees who will perform the same duties, using the same skills, working under, for the most part, the same supervisors, both before and after the relocation. See *Silver Court Nursing Center, Inc.*⁷⁵

In sum, I find that the Moakley Building RNs, the vast majority of whom will be transferees from the MNA unit, constitute a proper accretion to the MNA unit. I shall include in the unit any RNs who are assigned to work in the Moakley Building on a permanent and regular basis, including MNA transferees, SEIU transferees, and new hires.⁷⁶

⁷⁵ 313 NLRB 1141 (1994).

⁷⁶ Thus, the six SEIU nurses from the Menino Pavilion radiology department who will occasionally assist in the nuclear medicine area in the Moakley Building will not be included in the MNA unit, nor will the SEIU wound and ostomy care nurse who will occasionally cover for the Moakley Building wound and ostomy care nurses be included. With respect to Elizabeth Kendrick, an SEIU unit nurse who works 20 hours per week in a surgical specialties clinic at the Yawkey ACC, and who will also work four hours a week at the Moakley Building ENT clinic, the evidence is insufficient to determine whether she shares a sufficient community of interest, for example, as a dual function employee, to warrant her inclusion in the MNA unit as well as the SEIU unit. See *Columbia College*, 346 NLRB No. 69, slip op. at 4-5 (Mar. 31, 2006) (tutors). Accordingly, I make no finding as to Kendrick.

Unit clarification on the theory that the relocated nurses remain in a unit without performing an accretion analysis

Relying on *Premcor, Inc.*⁷⁷ and *Developmental Disabilities Institute, Inc.*,⁷⁸ each union contends that the bargaining unit it represents should be clarified to include the RNs in the Moakley Building without regard to an accretion analysis. In *Premcor*, the employer moved its control room function to a new, separate facility, and selected six bargaining unit “operator 1s” from the old location to fill new positions there, now called “PCCs.” The record showed that once the move was complete, there would be no operator 1 job at the prior location as it previously existed. The Board found that, despite the fact that the PCCs would use new technology at the new facility, they were essentially performing bargaining unit work. In these circumstances, they belonged to the existing unit, and an accretion analysis was inapplicable. The Board held that, “Once it is established that a new classification is performing the same basic function as a unit classification historically had performed, the new classification is properly viewed as remaining in the unit rather than being added to the unit by accretion.”⁷⁹ (emphasis supplied)

The MNA argues, citing *Premcor*, that BMC is just migrating MNA work to a new location, because virtually all RN functions at the new facility are currently being performed by MNA nurses, so that the Board should simply “declare,” without an accretion analysis, that these positions remain in the existing MNA unit. SEIU appears to argue, citing *Premcor*, that because the parties have always defined the two units solely by their location on the BMC campus, rather than by department or by specialty, and because the SEIU recognition clause already covers all employees in the RN classification, regardless of specialty, who work in the geographic area in which the Moakley Building is located, any employees in the RN classification at the Moakley Building simply “belong to” the SEIU unit, without an accretion analysis.

I do not believe that the facts of the present case are appropriate for a *Premcor* analysis, especially where here, unlike in *Premcor* or *Developmental Disabilities*, there are two competing unions involved representing similar bargaining units. Were I to apply a *Premcor* analysis, however, I would find, in agreement with the MNA, that the MNA nurses relocated to the Moakley Building should remain in the MNA unit. The vast majority of the Moakley Building nurses, with a very few exceptions, will be transferees from the MNA unit who will perform the exact same functions at the Moakley Building that they have historically performed at their current locations.

This case differs from *Premcor*, in the sense that there will be no newly established classification. MNA nurses will remain in the same job classifications after

⁷⁷ 333 NLRB 1365 (2001).

⁷⁸ 334 NLRB 1166 (2001).

⁷⁹ *Premcor, Inc.* supra at 1366; *Developmental Disabilities Institute, Inc.*, supra at 1168.

they relocate and, with the exception of the ASC nurses, they will not employ any new or different technology. That, in my view, presents an even more compelling case than *Premcor* for a finding that the relocation will not change the integrity of the existing unit, and that the relocated nurses should simply remain in it.

Inclusion pursuant to the *Illinois-American Water Co.* line of cases

The MNA argues, alternatively, that the Moakley Building nurses should be included in the MNA unit pursuant to a line of cases exemplified by *Illinois-American Water Co.*⁸⁰ In that case, an employer transferred nine bargaining unit employees to a newly created computer center ten miles away and gave them a new title. They were given training to use new technology to perform the same functions that unit employees performed before the transfers. In these circumstances, the Board found they enjoyed a sufficient community of interest with the unit employees to be includable in the unit.

For the same reasons described with respect to the *Premcor* line of cases, I find *that* this line of cases also is inappropriate to apply to an analysis of the present case. Nevertheless, were I to make such an analysis, I conclude that it would support a finding that the relocated RNs should be included in the MNA unit. In this regard, at least some of the Moakley Building positions, those in the ASC, will be altered by new technologies requiring substantial periods of training. Nonetheless, those RNs will still perform the same basic function, with the same basic skills, and the same ultimate supervision, that they did on the East Newton campus, so that the MNA unit would remain appropriate if these relocated positions were included in it.

Accretion pursuant to the *Gitano Distribution Center* line of cases

Both the MNA and SEIU contend, alternatively, that the Moakley Building nurses should be included in their respective units under the standard announced by the Board in *Gitano Distribution Center*.⁸¹ Under *Gitano*, when an employer transfers a portion of its employees at one location to a new location, the Board begins with a rebuttable presumption that the unit at the new facility is a separate appropriate unit. In determining whether the presumption is rebutted, the Board looks to such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history. *Mercy Health Services North*.⁸² If the presumption is not rebutted, the Board determines whether a majority of

⁸⁰ 296 NLRB 715 (1989). In *The Sun*, 329 NLRB 854, 859 (1999), the Board acknowledged that the *Illinois-American* line of cases, unlike the UC case at issue there, were unfair labor practice cases involving the transfer of employees from a bargaining unit. The Board found that, while those cases were not dispositive, they were nonetheless clearly analogous and provided useful guidelines for analysis of a UC case.

⁸¹ 308 NLRB 1172, 1175 (1992).

⁸² 311 NLRB 367 (1993).

the employees in the unit at the new facility are transferees from the original bargaining unit, in which case a bargaining obligation arises. *Gitano*.⁸³ If the Board finds that the presumption has been overcome – that the unit does not constitute a separate appropriate unit – then the Board will accrete the employees involved to the existing unit. *Mercy Health Services North*.⁸⁴

Applying a *Gitano* analysis here, I find that the presumption has been rebutted. Most importantly, no party takes the position that a separate unit of RNs employed at the Moakley Building would be appropriate. Moreover, the congressional admonition against proliferation of units in the health care industry is a further reason to reject the appropriateness of creating a third RN unit at the same facility.⁸⁵

Finally, were I to examine the factors used to determine whether or not the nurses working at the Moakley Building would constitute a separate appropriate unit, I would still find, as the Board found in *Mercy Health Services North*, that the presumption had been rebutted. There does not appear to be a case in which the Board applied the *Gitano* analysis in a situation where two different unions were competing for representation of relocated employees. I note, however, that in *Armco Steel Company*,⁸⁶ the Board held that “*Gitano*, by its terms, begins with a determination of whether certain employees relocated by an employer remain a part of the unit from which they came...” (emphasis supplied) Since, with a very few exceptions, the RNs assigned to work in the Moakley Building will be relocated from the MNA campus, I find that the proper inquiry under *Gitano* is whether the relocated MNA nurses, together with any other nurses permanently assigned to the Moakley Building, belong in the MNA unit. I find, for the same reasons discussed above, that the relocation of a small portion of the MNA nurses to the Moakley Building will not destroy the integrity of the existing MNA unit. The Moakley Building is only a few blocks away from the existing MNA campus. The MNA nurses who will be relocated to the Moakley Building will perform the same work, use the same skills, report, with the exception of the ASC nurses, to the same supervisors, and work, for the most part, under the same working conditions as they did before.⁸⁷ As noted above under

⁸³ Supra.

⁸⁴ Supra.

⁸⁵ In *Manor Healthcare Corp.*, 285 NLRB 224, 224-225 (1987), the Board observed that the Congressional concern about proliferation of units in the health care industry, as reflected in the legislative history of the 1974 amendments to the Act, was directed to the fragmentation of employee occupational groups rather than to issues of unit scope. The Board stated, however, that it did not intend to foreclose consideration of this congressional policy in cases involving unit scope. I note that the Board would not ordinarily approve more than one RN unit at the same facility, and that the anomalous situation at BMC, which has two separate RN units, came about only because of the historical merger and the agreement of the parties.

⁸⁶ 312 NLRB 257, 259 (1993).

⁸⁷ In *Gitano*, the Board abandoned its former “partial relocation” and “spinoff” analyses, finding that they had resulted in an analytical framework that focused on the continuity between the “old”

the discussion of accretion factors, 19 of the Moakley Building nurses will share common first-level supervision with other MNA nurses. Some Moakley Building nurses, such as the nurses in the center for cancer and blood disorders, will not share common first-level supervision with other MNA nurses, but that does not represent a change from the status quo. Similarly, although there is no evidence that there will be interchange between the Moakley Building nurses and MNA unit nurses, and there is evidence of only limited contact with MNA unit nurses in other areas, that, too, does not represent a change from the status quo. Little will change but the location to which the MNA transferees report to work.

Conclusion

In concluding that the Moakley Building RNs belong in the MNA unit, I acknowledge that none of the analytical frameworks represented by the above cases is exactly on point. In this regard, as noted above, neither *Premcor*, nor *Illinois-American Water*, nor *Gitano* presented the issue of conflicting representational claims by two unions, and *Premcor* and *Illinois-American Water*, unlike this case, involved the creation of new classifications. *Marion Power Shovel* is a pre-*Gitano* case, so it is unclear if the Board would use the same approach today in a case involving two competing unions. Nevertheless, I find, on balance, that whichever method of analysis is employed, the relocation of certain services and MNA nurses from the MNA-represented East Newton campus to the Moakley Building a few blocks away will not destroy the integrity of the existing MNA unit and, for all the reasons elaborated above, the MNA nurses who will be relocated to the Moakley Building should remain in the MNA unit, and that the few non-MNA RNs who are permanently assigned to the Moakley Building, whether they are new hires or transferees from the SEIU unit, also belong in the MNA unit.

CLARIFICATION OF BARGAINING UNIT

IT IS HEREBY ORDERED that the collective-bargaining unit represented by the Massachusetts Nurses Association be clarified to include:

All regular full-time and regular part-time registered nurses and all regular full-time and regular part-time advanced practice nurses and per diem nurses employed by the Hospital at its 88 East Newton Street, Boston,

and “new” units, rather than on the correct focus, balancing the rights of the new employees against those of transferees to the new location. It also stated in footnote 21, “Because the new facility is presumptively a separate unit, the Board views as irrelevant to the analysis the question of whether or to what extent the employees at the new facility are performing work that previously was performed by unit employees at the old facility.” *Gitano Distribution Center*, supra at 1175 and fns. 21 and 23. This language appears to be directed toward the determination of majority status, once the presumption has been rebutted. It does not appear to preclude consideration of “continuity” – the fact that the relocated employees perform the same functions under the same supervision that they did in their former location – for purposes of determining whether the presumption has been rebutted in the first instance.

Massachusetts location and at the Moakley Building at 830 Harrison Avenue, Boston, Massachusetts, but excluding all other licensed practical nurses, physicians, other professional employees, technical employees, skilled maintenance employees, business office clerical employees, non-professional employees, students, temporary employees, casual employees, confidential employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act, and all other employees.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 7, 2006. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlr.gov.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 24th day of May, 2006.

h:\r01com\decision\unit clarification\uc839 (boston medical center).doc